Exhibit 42

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

----------X

In Re:

LEHMAN BROTHERS HOLDINGS INC.,

et al.,

Debtors.

Chapter 11
CASE NO.: 08-13555(JMP)
(Jointly Administered)

----------X

125 Broad Street
New York, New York

September 12, 2013
9:21 a.m.

VIDEOTAPED DEPOSITION of RICHARD MILLETT, before Melissa Gilmore, a Notary Public of the State of New York.

ELLEN GRAUER COURT REPORTING CO. LLC
126 East 56th Street, Fifth Floor
New York, New York 10022
212-750-6434
REF: 104785

MILLETT

were being instructed as a barrister; is that correct?

A. Well, I'm still being instructed as a barrister, but was instructed as an advocate to fight at the case and advise on the case on behalf of the client, but not as an expert.

Q. Thank you.

Do you know Laurence Rabinowitz?

A. Yes.

Q. Do you believe he is a well-respected commercial lawyer?

A. Yes.

Q. In fact, he is very highly regarded in England as a commercial lawyer; is that correct?

A. Yes.

Q. What were you given in connection with drafting your first declaration in this case?

MR. ISAKOFF: I'm going to object to that. That's outside the scope of discovery.

MR. DE LEEUW: You're not allowing him to answer?

is a real ambiguity. And, secondly, the circumstances in which the document is put forward.

Q. Thank you. You would agree it's not a rigid rule. It's one aid in construction, according to you; is that fair?

A. It is an aid to construction.

Q. And --

A. It's more than just an aid. It's a principle of construction.

Q. But it's a principle of construction that's only -- that only comes into play when a court is unable to decide which of two meanings is the right one; isn't that correct?

A. Yes.

(Exhibit 117, Portions of Textbook Entitled The Interpretation of Contracts by Sir Kim Lewison, marked for identification.)

Q. I'm going to hand to you what's being marked as Exhibit 117. It's entitled The Interpretation of Contracts by Sir Kim Lewison.

A. Lewison.

Q. Lewison. Thank you.

agreements?

MR. ISAKOFF: Object to form.

Could I have that question read back, please?

(Record read.)

MR. ISAKOFF: Objection stands, "decision."

Go ahead.

Q. I will rephrase it.

Mr. Millett, do you disagree with the judge's statement in the CDV Software case that the contra proferentem principle is of uncertain application and little utility in the context of commercially negotiated agreements?

A. Well, there are three elements to that sentence if one is going to analyze it closely.

The first is the question of whether the principle is of uncertain application, generally, or whether she means that it's of uncertain application in the context of commercially negotiated agreements.

I regard that sentence, I'm afraid, to the naked eye, as a little difficult to

MILLETT

construe. I don't know whether her reference to the context of commercially negotiated agreements covers both uncertain application and little utility. I find that a little difficult to break down, but I would not -- I don't think that the rule is of such uncertain application that judges don't know when to use it, when they think it's right to do so. They do. It's routinely used.

So, although you can certainly say, as Sir Kim does, that it's difficult to predict easily the cases in which the court will find the maxim a useful tool, which I agreed with earlier, and if that is what she means by uncertain application, then I would agree.

The question of little utility is a hard one to apply. It may be of some utility, it may be of great utility, it may be of no utility in the context of commercially negotiated agreements.

What I read, however, the learned judge is saying in that case is, that where both parties, under equal bargaining power, have sat opposite each other and thrashed out

MILLETT

by commercial negotiation the terms of the contract, then, as a general proposition, there is less rather than more room for the application of the principle.

Q. You mentioned that the contra proferentem principle is routinely used.

Is it routinely used in the context of commercially negotiated agreements?

MR. ISAKOFF: Object to form.

A. That depends on the facts of each individual case.

Q. Would it be fair to say that when you have sophisticated parties that are able to negotiate a commercial agreement, the contra proferentem rule takes on less significance?

A. I think that's putting it too broadly.

Q. Have you ever heard anyone say that?

A. No.

Q. You have never seen references to the contra proferentem principle taking on less significance in commercially negotiated agreements either in textbooks or decisions?

A. Well, it depends what you mean by

MILLETT

commercially negotiated. If they are commercial agreements negotiated between businessmen, where both parties have had the opportunity to negotiate and discuss each term, then -- then that is a reason why the court may refuse to use the principle as a guide to interpreting the contract.

It's a legitimate reason not to do so, but I don't --

Q. Do you --

MR. ISAKOFF: He is not finished speaking.

A. I haven't finished.

Q. I apologize. I thought you had finished.

A. No.

But it is not a hard and fast rule. We don't do tick box like that, and it depends on each case.

Q. Is it your view that Lehman Brothers Holdings Inc. was a sophisticated party?

A. I have no idea.

Q. You don't know?

A. Well, they weren't so sophisticated

MILLETT

to avoid going spectacularly bust.

Q. Would you agree with me that, in 2003, when Lehman Brothers Holdings Inc. signed as a party to the lease with Canary Wharf, they were considered to be a highly sophisticated party?

A. I don't know. I can't say. I don't know.

Q. Would you agree with me that Lehman Brothers Holdings Inc. was, at that time, one of the largest companies in the world?

A. It's possible. By what measure, I don't know. I don't know anything about how big Lehman was or who was there or how sophisticated they were in 2005.

Q. Are you aware that Lehman Brothers Holdings Inc. was one of the largest investment banks in the world as of 2003?

A. I'm aware that that's what people have said about it. 2003?

Q. 2003, correct.

A. Right. I don't know.

Q. You are not basing your opinion in any way on whether Lehman Brothers Holdings

Inc. was a sophisticated or unsophisticated party as of 2003?

A. No. I think that's fair.

Q. Do you base your opinion on any evidence whatsoever about the commercial context in which Lehman Brothers Holdings Inc. and Canary Wharf negotiated?

MR. ISAKOFF: Object to form.

Q. The lease and Schedule 4.

A. No. Other than what I read in the transcripts.

Q. Is there anything in those transcripts that you are relying on in reaching your opinion in this case about the commercial context of the lease and Schedule 4?

A. Yes. As I referred to in paragraph ten, it was Sir George Iacobescu's evidence that it was the landlord who put forward Schedule 4 to the lease.

Q. Other than that testimony that Mr. Iacobescu, Sir George Iacobescu testified that the landlord put forward the schedule to the lease, are you relying on any other evidence of the commercial context of the lease

MILLETT

(Record read.)

A. No, that's not correct.

Q. Well, you saw in the record that there's some references to people using the term "guarantee" in depositions and in e-mails.

Do you recall that?

A. No, I don't think I recall it in e-mails. In e-mails? I don't know.

Q. Are you putting any reliance in this case on the references by any of the parties after the fact to Schedule 4 as an indemnity or a guarantee?

A. In forming my opinions, I don't rely on the labels, not least because I believe that the lease says you are not allowed to, but in addressing Mr. Rabinowitz's opinion, because he was interested in the labels, I offered an opinion about them.

Q. I'm also just referring to whether people, in discussions or in e-mails, would refer to Schedule 4 in its entirety as a guarantee or an indemnity.

Are you relying on any such reference in forming your opinions in this

case?

MR. ISAKOFF: Objection.

A. I'm not sure I see -- I don't know what documents you are talking about, and I don't think I have seen any.

Q. So you are not relying on anything like that?

A. Anything extraneous to the document?

Q. Correct.

A. I don't believe so.

Q. You agree with Sir William Blackburne that people often use the term "guarantee" loosely to describe an indemnity, correct?

MR. ISAKOFF: Can I have that question read back, please?

(Record read.)

MR. ISAKOFF: Objection, mischaracterizes what the opinion says.

A. The words that Sir William uses at paragraph 22, at letter J, are -- is it is not unusual. He doesn't use the word "often." I think there's a difference.

And I agree with what Sir William

says when he says it is not unusual to find the term "guarantee" used loosely to describe what is, in reality, an indemnity.

I would add, as I think I did, that it is also not unusual to find the word "surety" used to describe somebody who is, in reality, a guarantor. Indeed, I think our book does that.

Q. I was going to just ask you about your book.

In fact, your book refers to the law of guarantees. That's the title of the book, correct?

A. Yes.

Q. You didn't mean to exclude the law of indemnities, did you?

MR. ISAKOFF: Object to form.

A. Well, I'm afraid I don't have, because of my -- size of my briefcase, my publication in its entirety with me.

MR. ISAKOFF: I happen to have it.

A. That's a broad question.

From recollection, and I'm fairly familiar with it, of course, it is not a book

about indemnities. It's a book about guarantees. Although, of course, inevitably, chapter one contains an analysis and discussion of the differences between them.

So there are -- as does the chapter on the statute of frauds.

Q. So there's a discussion in your book about the law on indemnities as well, correct?

A. Yes.

Q. You would agree that the right way to determine whether a contract is a contract of indemnity or a guarantee is to analyze the context of the contract and the words used in the contract, correct?

A. Yes. Could you just repeat the first part of that question?

Q. Sure. You would agree that, in determining whether a contract is an indemnity or a guarantee, you should analyze the context of the contract and the words used in the contract, correct?

MR. ISAKOFF: Object to form.

A. Yes, I think so.

Q. Is it also true that, ultimately,

MILLETT

A. Yes.

Q. So, even if the court were to determine that there was a material variation in schedule -- to Schedule 4, if it also determined that Schedule 4 was a contract of an indemnity, that would not discharge the obligations of the surety, correct?

MR. ISAKOFF: Object to form.

A. I will answer it this way. If the court were to determine that Schedule 4 comprised an indemnity agreement, and not a guarantee, then the rule in Holme and Brunskill would have no application.

Q. Let me ask you to turn back to the Vossloh decision, which is Exhibit 103.

A. Yes.

Q. If I could ask you to turn to paragraph 24 on page 312.

A. Yes.

Q. Do you see the discussion there begins the discussion of how to distinguish contract of guarantee to a contract of indemnity; is that true?

A. Can I just read the paragraph?

MILLETT

Q. Do you agree that?

A. Yes. Interestingly, just picking up, he says, at the end, which actually harks back to a point I made before, "It is this feature which leads to the person giving the indemnity to be described as a surety, although, strictly, the contract of indemnity cannot, itself, be a contract of suretyship."

MR. ISAKOFF: She couldn't take it down that fast.

A. I'm so sorry.

The words he uses, "It is this feature which leads to the person giving the indemnity to be described as a 'surety,' although, strictly, the contract of indemnity cannot itself be a contract of suretyship."

That is really what I was referring to earlier when I was referring to the word "suretyship" and its use.

Q. Do you agree with Sir William Blackburne's conclusion in the Vossloh decision that an essential feature of an indemnity is that the indemnitor has a primary liability?

A. Yes.

MILLETT

Q. And what is a primary liability?

A. He is liable for the performance of the obligation in question, regardless of whether somebody else is liable or not.

Q. And that's also referred to as a primary obligation; is that correct?

A. Yes.

Q. And would you agree that the distinction between a primary obligation and a secondary obligation is critical to determining whether a contract is one of indemnity or guarantee?

A. Can I just back -- go back a little bit? I may have skated over perhaps what could be a subtle difference.

We speak of obligations. We speak of liabilities. In reality, what happens is that parties assume obligations. They don't necessarily assume liabilities. They assume liabilities for the performance of that obligation, and liabilities, whatever they are in law, where those obligations are not performed.

The word that he uses is a primary

A. (Perusing.) Yes, I see that.

Q. You see that, in section ten of the lease, there is a reference to the surety having a primary obligation in the terms contained in Schedule 4.

Do you see that?

A. I do. I don't think you have quite phrased it right. You paraphrased it, and not, I think, accurately, I'm afraid.

What it says is, "In consideration of this demise having been made at its request, the surety hereby covenants with the landlord, and as a separate covenant with the management company, as a primary obligation, in the terms contained in Schedule 4."

That's what it says. I see it says that.

Q. Do you think that it's irrelevant that the parties chose to use the words "primary obligation" when referring to Schedule 4?

A. Well, I doubt that it was irrelevant, because one has to assume that when the parties chose to use the words, they did so

MILLETT

with some kind of purpose in mind.

Q. Do you have any explanation for why they used the words "primary obligation"?

A. Well, the first question is whether the words "as a primary obligation" in clause ten, which you are showing me, refer to the surety covenanting with the landlord, or whether they refer to the separate covenant with the management company.

That ambiguity, to my mind, carries through to paragraph one of Schedule 4 as well.

So picking those words, as you have, is very interesting, but I'm not sure -- I personally -- personally not completely clear whether that's describing the covenant with the management company or the covenant with the landlord.

Q. Are you saying that you believe that the words "as a primary obligation" are only referring to the covenant with the management company as opposed to the covenant with the landlord?

A. No, I'm not going that far. I'm saying that it's arguable, at the very least,

MILLETT

of guarantee or indemnity?

MR. ISAKOFF: Object to form.

A. I personally would ignore the labels used by the parties unless I really had to have recourse to them. I don't believe you do.

I'm also looking at the lease because I believe, and I'm sure I quoted it in my first opinion, there is a provision in the lease which says that you aren't allowed to look at the labels.

So, in forming my views, I don't look at the labels, but it is right to say that when I address Mr. Rabinowitz's opinions, because he did look at the labels, I had to form a view about them.

Q. Well, beyond the label of paragraph one, you recognize, do you not, that paragraph one repeatedly uses the word "indemnify" or "indemnified," correct?

A. Well, paragraph one uses the word "indemnify" and "keep indemnified." You say repeatedly. We can read it. It uses it seven lines down.

Q. Yes. Okay. So the fact of the use

of the word "indemnify" and "indemnified," would you agree with me that that's relevant, but not dispositive, in considering whether a contract is one of indemnity versus guarantee?

MR. ISAKOFF: Object to form.

A. Yes. I mean, I can't sit here and say that it's utterly irrelevant to the question before an English court was, what is Schedule 4 as a matter of its true characteristics, properly interpreted, nobody -- of course, you would look at all the words, and included in the words are the words "shall indemnify and keep indemnified." I'm not going to pretend it's irrelevant.

Q. Use of those words would tend to support an argument that the contract is one of indemnity, but, in your view, you would need to look at all the rest of the words in context, correct?

A. No, I don't think it tends to support the argument one way or the other. There is part -- hang on.

Q. I apologize. I saw you were continuing, so I stopped.

MILLETT

works and what the words "indemnify" and "keep indemnified" mean.

Q. And is it your view that the words being used in Schedule 4 are not referring to an obligation that is being given by way of security for the performance of an obligation by another?

MR. ISAKOFF: Object to form.

A. I do not believe that the words "the surety shall indemnify and keep indemnified the landlord and the management company," are -- et cetera, are words which -- or under which security is being provided for the performance of an obligation.

My opinion is that paragraph one is a single composite obligation, and that the second element of it, following the words "and the surety shall indemnify" are descriptors, they describe the extent of the surety's obligation to make payment, which is imposed upon him or it under the first part of paragraph one.

Q. If I could ask you to take a look at paragraph one of Schedule 4, which is marked as

MILLETT

It can actually be used as "or." It can also be used, and is very commonly used, as a serializing particle.

Q. In either one of those three different possibilities, conjunctive, disjunctive or serial, there are multiple items, at least two, correct?

MR. ISAKOFF: Object to form.

A. I think the use of the word "and" isn't going to get you anywhere. You've got to look at what's being connected.

Q. That's my question. What's being connected?

MR. ISAKOFF: Object to form, asked and answered.

Q. What's being connected with that word "and"?

A. What's your question?

Q. What are the two things or more that are being connected by the word "and" on the sixth line of paragraph one of Schedule 4?

MR. ISAKOFF: Object to form and asked and answered.

A. What's being connected is the

assumption of obligation with the promise, as it were, as to the extent and manner of performance of that obligation.

Wash the car and don't use the red soap.

Q. So let's take those two pieces. You said the first is the assumption of the obligation.

What words in paragraph one are the assumption of obligation?

A. The surety hereby covenants. These are the operative words of assumption of obligation.

Q. I'm sorry. Are you saying that the words "the surety hereby covenants" all the way up to the word "specified" before and or --

A. It's a slightly sort of an arid question. I'm sorry to be too critical.

But what's the word in that clause that imposes the obligation on the surety? Well, it's his promise, and that's the word "covenant," but what he's covenanting to do is the whole of it.

Q. All of it up to the word

MILLETT

MR. ISAKOFF: Objection.

MR. DE LEEUW: I will restate it, because either it got mistranscribed or I misstated it, so I will say it again.

A. It sounded like that Groucho Marx thing from Night at the Opera, party of the first party saying do your best.

Q. Is there any provision in Schedule 4 or the lease that specifies that what you have circled as the second part of paragraph one of Schedule 4 can only be read as the extent and manner of performance of the first part of paragraph one of Schedule 4?

MR. ISAKOFF: Object to form.

A. There are no express words in paragraph one or Schedule 4 or to the extent that I have reread it again, which is not much, the lease, which tells you that you have to read paragraph one in the way that I believe it should be read. But to finish the answer, that takes you nowhere.

In order to characterize a commercial document, you don't look for -- you're not going to start by looking at express

MILLETT

provisions where the parties tell you how to read it. If the parties were going to do that, they would have that in the definitions clause.

MR. ISAKOFF: Are you ready for a break? We have been going for about an hour and 20 minutes.

THE WITNESS: Sure.

MR. DE LEEUW: That's fine. Why don't we take lunch now.

THE VIDEOGRAPHER: We are now off the record at 12:37 p.m., September 12, 2013.

(Luncheon recess taken at 12:37 p.m.)

MILLETT

to copy as much as I could without killing too many trees, but if ever you believe you need to actually look at the treatise itself, we have a copy of it here.

A. All right. Thank you very much.

Q. Now, can I ask you to turn to page 15 of Exhibit 121?

A. Okay.

Q. And I'm going to refer to a portion of this treatise that starts with the very, very bottom of page 15, the paragraph that starts, "Indemnity provisions," over in the last carryover paragraph.

Do you see that?

A. Yes, I see that.

Q. Okay. And you see in the passage from page 15 to 16, and read any of it you like, you are referring to a case, Sofaer versus Anglo Irish Asset Finance.

Do you see that?

A. Yeah. Yes, I do.

Q. And if I can ask you to focus for a moment on the second clause that's at issue in the Sofaer decision, which is about the middle

MILLETT

commercially absurd for there to be coextensivity in the way I've just suggested, then the answer to that is it's not for me to say, but guarantees which carry coextensivity with them are routinely used, as opposed to indemnities, and if parties, sophisticated parties like certainly your clients were, wanted an indemnity, there are plenty of forms in the book you could reach for to use.

Q. Let me give you a hypothetical, because you've said you haven't looked at the facts about the commercial context.

Hypothetically, if Canary Wharf negotiated the lease and Schedule 4 with executives of Lehman in New York, Lehman Brothers Holdings Inc., and built the building in Canary Wharf, England, at Lehman Brothers Holding Inc.'s request, and agreed to enter into a lease whereby the tenant was named as LBL, as a convenience for the Lehman group of companies, would that shape your opinion in any way whatsoever about what would be the most commercially sensible reading of paragraph one of Schedule 4?

MILLETT

points to it being a guarantee, but that isn't to say that that's always the case, as the next paragraph goes on to explain.

Q. Right. And the next paragraph goes on to explain that the presence of these type of clauses may very well point towards the opposite conclusion?

A. When you say may very well, where did I say that?

Q. You say, "Such a provision may point towards the opposite conclusion, because it may show that it was intended that the liability of the obligor should continue regardless of what might happen to the principal debtor."

A. That's what the text says, yes. The words very well don't appear in there. They appeared in your question, but not in my text.

Q. You would agree with me that the presence of paragraph 6(d) and 6(g) may show that it was intended that the liability of the obligor should continue regardless of what might happen to the principal debtor.

A. Well, you can't discount that, no.

Q. Could I ask you to turn to paragraph

for what period, and which of those were for administrative expense versus just an unsecured claim?

A. That is correct. That's what I said before, and I'm proceeding on a number of different assumptions or hypotheses as to what those were.

Q. You don't read what O'Donovan and Phillips say in their treatise, which has been marked as Exhibit 122, as saying that -- excuse me.

A. 122 is right.

Q. 122. You don't read that paragraph 688 as saying that if you release a portion of the entire debt outstanding on the principal contract, that does not operate as a full discharge of the surety?

MR. ISAKOFF: Object to form. There's too many negatives.

Q. Do you read the O'Donovan and Phillips treatise, which has been marked as Exhibit 122, paragraph 688, as saying that if the release is only of a portion of the entire debt outstanding under the principal contract,

MILLETT

then there will not be a full discharge of the surety?

A. Well, I can see what it says. I don't disagree with -- I don't disagree, in the short time you have given me to look at it, necessarily with its conclusions, although I have to go and look at the cases which are referred to. They're Australian.

And, of course, as I said before, this is an English edition of what is actually an Australian publication. This bit of it seems to be highly Australian, if you look at it, if you look at footnote 209, but it seems to me that's a million miles away from this case, not only because there was no release of a portion of a debt anyway under the forfeiture letter, but, secondly, and perhaps more importantly for the purposes of answering your question, the release in the forfeiture letter wasn't a complete release.

The forfeiture letter did not say to LBL, oh, don't worry, you don't have to pay any rent at all during the time when the administrators were in occupation. The

you have to read the beginning of the paragraph together, is that -- that "any other act, omission, matter or thing whatsoever, but for this provision, the surety would be exonerated, either wholly in part" --

MR. ISAKOFF: It says it "or in part."

Q. Excuse me, "other than release, as set forth in that parenthetical, shall release, discharge or any way lessen or affect the liability of the surety under this lease," correct?

A. Right. That's what the words, with that correction, say.

Q. Read, as the words appear on the page, you would agree that the material variation to which you point to in the forfeiture letter would not release, discharge or in any way lessen or affect the liability of LBHI?

MR. ISAKOFF: Object to form.

A. Well, the words on the page do do that, but I would ask -- I think an English judge would look at these, and following the

MILLETT

West Horndon, example of the case in West Horndon, say, well, none of -- say this is very strange, none of the following or any combination shall release, discharge or in any way lessen or affect the liability of the surety, anything, dot, dot, dot, any other act or omission or thing whatsoever.

In other words, carte blanche, anything and everything which you could ever think of by which the surety would be exonerated, either wholly or in part, isn't going to run. Now, that's, to my mind -- it makes sense as a matter of grammar. The court could apply it as a matter of grammar, but my point is that, as a matter of law, courts -- or approach, courts don't, because they say that's carte blanche, you can't have carte blanche.

Q. Wouldn't the carte blanche that you're referring to mean that if, in fact, Schedule 4 was a guarantee, paragraph 6(g) would, in effect, make it an indemnity with respect to any variation of the underlying obligation?

MR. ISAKOFF: Object to form.